December 5, 2007

Mr. Bob Keller, Field Supervisor
Washington Federation of State Employees
1210 Eastside Street SE
Olympia, WA 98501-2443

RE: Brenda Boles v. Department of Labor & Industries
Director's Review Request 06AL0097

Dear Mr. Keller:

On July 27, 2007, I conducted a Director's review meeting at the Department of Personnel, 2828 Capitol Boulevard, Olympia, Washington, concerning the allocation of Brenda Boles' position (#2878). Present at the Director's review meeting were you and Ms. Boles; Human Resources Manager Sandi LaPalm and Human Resources Consultant Debbie Yantis, representing the Department of Labor & Industries (LNI).

Background

On February 22, 2006, LNI's Human Resources Office received a Position Description Form (PDF) requesting reallocation of Ms. Boles' position from an L&I Auditor 5 to a Medical Program Specialist 2 (Exhibit D). Ms. Yantis subsequently conducted a desk audit and interviewed Ms. Boles. By letter dated May 31, 2006, Ms. Yantis informed Ms. Boles her position was properly allocated to the L&I Auditor 5 classification (Exhibit B). Ms. Yantis concluded the majority of Ms. Boles' work time was spent supervising staff who detect and eliminate provider fraud and abuse by performing Industrial Insurance provider audits and related duties. Therefore, she determined Ms. Boles' position was appropriately allocated.

On June 27, 2006, the Department of Personnel received Ms. Boles' request for a Director's review of LNI's determination (Exhibit A).

Summary of Ms. Boles' Perspective

Ms. Boles contends the work she performs in the Fraud Prevention and Compliance/Provider Fraud unit is similar to the work performed by the Medical Program Specialist (MPS) positions in the Health Services Analysis (HSA) unit. Ms. Boles asserts both positions perform or supervise audits by definition and determine dollar amounts owed to the state. Ms. Boles asserts "cost containment" is inherent in her position as well as MPS positions, and she contends MPS positions do not perform duties in actual cost containment programs. Rather, Ms. Boles asserts the nature of the work performed by both L&I Auditor and MPS positions results in cost containment. As an example, Ms. Boles states she supervises auditors who identify loopholes in policies, which she describes as cost containment. Ms. Boles further states she participates in teams with HSA staff in an effort to reduce cost issues.

Ms. Boles asserts that historically these positions perform the same level of work and at one time were assigned to the same work unit. Ms. Boles further contends her position supervises auditors in the same manner as her counterpart in the HSA unit with the added responsibility of dealing with criminal fraud investigations, (See Flow Chart, Exhibit N). Ms. Boles asserts the MPS positions are assigned to a higher salary range, which she views as an inequity. Ms. Boles contends the salary range of the L&I Auditor 5 is not consistent with the level of responsibility and asserts the generic state Auditor classes are at a higher salary range for performing less complicated audits. Ms. Boles contends her position not only deals with fraud prevention and cost containment but also serves to educate providers, which she believes is more consistent with the MPS class. Ms. Boles states that in early 2006, she learned that some L&I Auditor positions were reallocated to Medical Program Specialist positions. Ms. Boles contends those positions perform the same functions as her position. Similarly, Ms. Boles asserts the level of work and responsibility assigned to her position best fit the Medical Program Specialist 2 classification.

Summary of LNI's Reasoning

LNI acknowledges that historically there was a position within the HSA that performed provider fraud audits. However, LNI asserts the department expanded the existing program to include the Fraud Prevention and Compliance/Provider Fraud Unit. L&I asserts Ms. Boles' position is responsible for supervising auditors whose positions specifically perform work assigned in the Provider Fraud Unit as Provider Fraud Specialists. LNI contends Ms. Boles' position fits the L&I Auditor 5 class because the primary purpose of her position is to supervise those auditors who investigate provider fraud. LNI asserts the L&I Auditor positions have an accounting focus as opposed to a medical program focus like the Medical Program Specialist (MPS) positions.

Accordingly, LNI asserts the MPS positions perform work in a completely different discipline than the L&I Auditor positions. L&I asserts MPS positions act as project leads in the Health Services Analysis (HSA) unit and are charged with developing medical fee payment policies based on research and analysis in the medical field. For example, LNI states an MPS position may be researching claims from injured workers related to head injuries and then researching and analyzing similar medical conditions to determine appropriate fee schedules. While LNI acknowledges some auditor positions in HSA were reallocated to MPS positions due to an

expansion of duties, LNI contends that is not the case with Ms. Boles' position. LNI further asserts the flow chart example (Exhibit N) is only one component of an MPS position's assigned duties. LNI contends the "cost containment" issues related to MPS positions encompass an entire process, which is more involved than the auditing piece of identifying fraud and recouping losses.

While LNI recognizes the L&I Auditor classes are at a range lower than the generic Auditor classes, the department contends the allocation process is not the proper forum for changing a class specification. Based on the assigned duties and responsibilities, L&I contends the L&I Auditor 5 classification best describes the duties assigned to Ms. Boles' position.

Director's Determination

This position review was based on the work performed for at least the six-month period prior to February 22, 2006, the date of Ms. Boles' reallocation request.

As the Director's designee, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review meeting, and the verbal comments provided by both parties. Based on my review and analysis of Ms. Boles' assigned duties and responsibilities, I conclude her position is properly allocated to the L&I Auditor 5 classification.

Rationale for Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. See Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

The Labor and Industries Auditor 5 (L&I Auditor 5) definition states, in part, the position supervises L&I Auditors whose responsibilities are to identify non-compliance and perform professional audits and educational services to increase compliance with the Industrial Insurance laws, rules, and regulations. The definition also indicates that positions may serve as a litigation specialist, assisting the Attorney General's Office.

The Medical Program Specialist 2 (MPS 2) definition states, "[i]n the Health Services Analysis Office . . . leads professional staff engaged in the review, analysis, and monitoring of health care costs containment programs." Further, "[p]ositions independently develop, plan, evaluate, promulgate polices and provide consultative services to medical providers and/or department staff regarding program administration."

The previous Classification Questionnaire (CQ) for position #235-2878, dated September 22, 2003, was signed by Program Manager Lee Benford and indicated the position was allocated to

the L&I Auditor 5 classification. The CQ noted the position had supervisory responsibility for the forensic auditors in the Provider Fraud Program (Exhibit E).

The position's objective on the PDF, signed by Ms. Boles and Program Manager Carl Hammersburg in February 2006 (Exhibit D), indicates the following:

> This position reports to the Provider Fraud Program Manager. This position supervises professional staff engaged in the review, analysis, monitoring, auditing and investigation of healthcare cost containment programs to purchase medically appropriate, quality and cost-effective health services for injured workers. This position independently develops, plans, evaluates, promulgates polices and provides consultative services to medical providers and/or department staff regarding program administration.
>
> This position contributes to the agency's overall mission to detect and eliminate provider fraud and abuse by performing Industrial Insurance provider audits, case preparations, and investigative duties, assisting in the prosecution and litigation of provider fraud cases, recouping monies identified in the audit process, and successfully terminating the provider numbers of those found guilty of defrauding or abusing the Medical Aid Fund.

The position's objective also notes the position contributes to the department's mission and the mission of the Provider Fraud Program, which is "to prevent abuse of the workers' compensation system and protect the economic vitality of Washington State."

When reviewing the majority of duties identified as 55%, the duties include supervising and monitoring the performance of professional staff assigned to the program. In this case, the program area is provider fraud. Although the two employees Ms. Boles supervises concurrently requested reallocation of their positions to the Medical Program Specialist 1 class, Ms. Boles supervises two L&I Auditor 4 positions. The duties assigned to Ms. Boles' position primarily relate to the supervision of provider fraud auditors with the main focus of detecting fraud. The interview notes from the desk audit, taken by Human Resource Consultants Debbie Yantis and Tracey Aiona (Exhibit F), clarify the duties on the PDF (Exhibit D):

- Hires, leads and supervises professional staff engaged in the review, analysis and monitoring of health care cost containment program operations, specifically in the area of provider compliance to RCW, WAC and the Medical Aid Rules and Fee Schedules to ensure the purchase of medically appropriate, quality and cost-effective surgical and medical treatment for injured/ill workers (Exhibit D).

The audit notes clarify that the professional staff reviewing, analyzing, and monitoring health care cost containment operations in the area of provider compliance are the L&I Auditor 4 positions Ms. Boles supervises in the Provider Fraud Program. The objective is to ensure providers are in compliance with laws, Medical Aid Rules, and fee schedules by reviewing bills, claimant files, and bank statements.

Cases identified as fraudulent may result in changes to agency policy. Through the fraud review process, Ms. Boles and the auditors she supervise identify loopholes in the law and policy problems and then notify the appropriate manager(Exhibit F).

- Monitors performance of staff assigned to the program to determine training needs and provide technical assistance concerning interpretation of medical policy and procedures and medical coding. Research, develop, coordinate, and implement educational and training programs for staff and medical providers.

In the audit notes, this was identified as basic supervision of staff. For in-training positions, Ms. Boles assists with on-site audits, providing guidance. Training includes detecting fraud and education about the Provider Fraud Program. Examples of on-site training for providers includes providing and explaining copies of fee schedules, provider bulletins, and rules/laws, or record keeping processes.

- Participates in and makes recommendations to the development, interpretation and implementation of health care fee and cost polices. Promulgates administrative and procedural regulations for program.

Ms. Boles is also a member of the Payment Issues Resolution Committee (PIRC) along with staff and managers from different areas including HSA, Insurance Services, and the Provider Hotline. As a committee, PIRC reviews policy interpretations and provides stakeholder input. Ms. Boles develops in-training programs for her staff and notifies staff and work groups about policy changes, updating documents in binders (Exhibit F).

In her written comments, Ms. Boles describes her involvement with various workgroups, resulting in updated provider bulletins incorporating the most recent Medical Aid Rules and Fee Schedules (Exhibit I). Ms. Boles clearly contributes to these workgroups with her recommendations for policy improvements. However, this is a team effort, and Ms. Boles is providing useful information based on her work performing and supervising provider fraud audits and investigations.

- Provide technical assistance in coding and interpretations of the Medical Aid Rules, fee schedules, and RCWs and WACs regarding health care costs and provider fraud programs.

Ms. Boles participates in work groups that identify holes in the program. Groups are led by staff in HSA, and she collaborates and shares information with HSA staff. She also helps providers to ensure they are on track.

- Develop and coordinate agency wide implementation of program initiatives to detect and eliminate provider fraud and abuse of the billing system.

Ms. Boles is involved with work groups addressing medical fraud, including other state and federal agencies. The group meets quarterly to review new cases, share information, discuss types of medical fraud such as over use of certain drugs. Also discusses issues regarding how certain providers are mis-billed.

- Responds to inquires and prepares summary and status reports and track performance measures.

Ms. Boles prepares reports and statistics for the Fraud Program Manager and GMAP.

- Reviews and evaluates state regulations, practices of other states and business, and publications for potential applicability to the health care cost containment program.

Review RCWs and WACs pertaining to agency and to the Department of Health. Review publications passed around the work unit and share information, including policy information and sampling techniques, from medical fraud group.

- May lead a team in the area of provider fraud audits, fees, policy revision and development, and other provider fraud and abuse issues.

The majority of time is spent monitoring in-training staff (L&I Auditor 4s) and reviewing investigative reports.

The above duties are consistent with the definition of the L&I Auditor 5 class because they involve supervising L&I Auditors who identify non-compliance, perform professional audits and provide educational services to providers to increase compliance with Industrial Insurance laws and rules. The primary functions assigned to these positions deal with detecting and preventing fraud and identifying providers who bill for illegitimate or exaggerated services.

It is undisputed Ms. Boles supervises provider fraud audits and investigations. It is the "medical analysis" piece that Ms. Boles believes justifies reallocation. As stated during the Director's review meeting, it is also the discovery that other positions had been reallocated in the HSA unit. When considering allocation, the duties of a position are compared to the available class specifications, not other positions. First, Ms. Boles' position is not located in the HSA Office as indicated in the definition of the MPS 2 class specification. However, in considering whether she "leads professional staff engaged in the review, analysis, and monitoring of health care cost containment programs," I reviewed the examples of work provided. While some examples are outside the timeframe relevant to this review, they reflect work performed at the time of Ms. Boles' request. The examples of work support auditing work rather than in-depth analysis of health care cost issues and programs or development and implementation of changes to medical program policies, as envisioned in the MPS 2 class.

For example, Ms. Boles reviews audit findings and makes recommendations such as expanding an audit by conducting a questionnaire survey for claimants addressing supervised treatment, billing for services actually performed, and whether or not services were performed by a medical

professional or assistant (Exhibit K–D); sends letters to providers indicating billings for services not performed or billed under an inappropriate provider number (Exhibit K–E); prepares a provider fraud monthly report summarizing staff activities including cross-referencing mileage, interpreter services, and appointment records, preparing case information and coordinating with AAG, reviewing case files for criminal activities, reviewing invoices for price discrepancies, and conducting on-site reviews (Exhibit K– K); assists in prosecution of providers for over billing (Exhibit K– 1); meets with auditor staff on payment and assessment information, new information and allegations (Exhibit K-5-8); researches missing bills, orders hard copies, and discusses how to review a referral with staff (Exhibit K– 9-11).

The above examples show Ms. Boles' role in supervising audits and investigations of provider records to detect fraud, not performing medical analysis or policy promulgation indicative of the MPS classes. I acknowledge Ms. Boles participates in focus groups and committees and shares provider billing issues and makes recommendations about policies and procedures related to provider billing (Exhibit K–J). She also participates in quarterly medical fraud meetings (Exhibit K– 3) and serves as a team member on various projects such as the provider bulletin roll-up project to streamline medical treatment guidelines, fees, and rules given to providers (Exhibit K–4). It is clear Ms. Boles contributes valuable information to these cross-functional teams based on her experience in medical billing and fraud. However, the majority of her work deals with supervising audits in the Provider Fraud Program.

Although the examples of work do not form the basis for an allocation, they lend support to the work envisioned within a classification. The typical work identified on the L&I Auditor 5 class specification most resembling Ms. Boles' duties includes, in part, the following:

- Plans and coordinates with management, other supervisors, and multi-disciplined agency personnel to determine the direction of the audit program and effect its implementation;
- Assists teams or individuals in goal setting and approves audit plan developed by subordinates;
- Coaches auditors;
- Interviews, recommends hiring and termination, and evaluates work performance of subordinate auditors;
- Analyzes, manages, and assigns audits; evaluates audit information for program development and management reports;
- Disseminates current departmental information and coordinates policy procedure matters between management and audit staff;
- Reviews audits to ensure consistent application of the laws, rules, and regulations;
- Leads in developing provider education;
- Interprets RCWs, WACs, and department policies and consults with staff to ensure uniformity and program consistency.

During the Director's review meeting, Ms. Boles raised the issue of salary inequity between the L&I Auditor classes and the generic Auditor classes. While I understand Ms. Boles' point, salary inequity is not an issue addressed through the allocation process. As noted by the former

Personnel Appeals Board (PAB), "[s]alary inequity is not an allocation criteria [*sic*] and should not be considered when determining the appropriate allocation of position." Sorensen v. Dept's Of Social and Health Services and Personnel, PAB Case No. A94-020 (1995). In addition, any revisions to class specifications are handled through a classification and pay proposal process, not through the allocation process.

Ms. Boles clearly demonstrates her knowledge and experience in medical billing and her ability to recognize and mitigate provider fraud. However, a position review is not a reflection of performance or an individual's ability to perform higher-level duties. Rather, a position review is limited to the duties and responsibilities assigned to the incumbent's position and how the majority of those duties best fit with the available job classifications. Based on the overall assignment of work, the L&I Auditor 5 classification best describes Ms. Boles' position #2878.

Appeal Rights

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

Sincerely,

Teresa Parsons
Director's Review Supervisor
Legal Affairs Division

c: Brenda Boles
Sandi LaPalm, LNI
Debbie Yantis, LNI
Lisa Skriletz, DOP

Enclosure: List of Exhibits